



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 686905 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC MNDC OLC ERP RP PSF FF

### Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 1 Month Notice to End Tenancy for Cause, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, to provide services or facilities required by law, and to recover the filing fee.

The tenant and agent for the landlord (the “agent”) attended the hearing. At the start of the hearing I introduced myself and the participants. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me.

The parties confirmed that they received evidence from the other party prior to the hearing and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act*.

### Preliminary and Procedural Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request to set aside the 1 Month Notice to End Tenancy for Cause and the tenant’s application to recover the filing fee at this proceeding. The balance of the tenant’s application is dismissed, with leave to re-apply.

Issue to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

Background and Evidence

The parties agreed that the tenancy began on April 1, 1997. The parties also agreed that currently, monthly rent in the amount of \$810.00 plus \$50.00 for parking, comprised of \$25.00 for each parking space multiplied by two parking spaces, is due on the first day of each month, for a total monthly amount of \$860.00 for rent and parking.

The tenant confirmed that he received a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated October 2, 2013 alleging two causes including the repeated late payment of rent, and breach of a material term of the tenancy. The tenant disputed the 1 Month Notice on October 10, 2013. The effective vacancy date indicated on the 1 Month Notice is listed as November 30, 2013. The tenant received both pages of the 1 Month Notice as both pages were submitted in evidence by the tenant.

The parties agreed that in a previous Decision dated August 12, 2013, the tenant was ordered to pay rent by specific dates and times by an Arbitrator. The file numbers have been included on the front page of this Decision for ease of reference. The three dates at issue and which were ordered in the August 12, 2013 Decision are:

1. \$860.00 due for August 2013 rent due by the tenant **no later than midnight, Friday, August 30, 2013.**
2. \$430.00 portion of September 2013 rent **due and payable by no later than midnight, Monday September 30, 2013.**
3. Effective October 1, 2013, **all rent is due and payable in advance of the first day of each month.**

During the hearing, the tenant testified that he did not pay August 2013 rent by August 30, 2013 and that he made that payment on September 3, 2013. The tenant also testified that the \$430.00 portion of September 2013 rent due September 30, 2013 was not paid until October 2, 2013. In addition, the tenant testified that October 1, 2013 rent was not paid until October 2, 2013.

The tenant referred to Notice issued by the landlord regarding rent collections which reads in part:

"This is a reminder that rent is due on the **first** of every month.

Please be advised that we will only be collecting rent cheques from the drop box on the 2<sup>nd</sup> from now on. Should your cheque not be there, ***it is your responsibility to deliver it to our office.***

If we have not received payment or communication by the 5<sup>th</sup> of the month, we will have no choice but to issue an Eviction Notice.”

[reproduced as written]

The tenant stated that based on the above, the landlord waived their right to have rent paid on the first day of each month and that they could not issue an Eviction Notice if rent was paid by the 5<sup>th</sup> day of each month. The landlord disputed the position of the tenant and stated that rent is due on the first day of each month, and the notice is to remind the tenants that they will be served with an Eviction Notice if they don't pay the rent as required.

The landlord made a verbal request for an order of possession during the hearing.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

The tenant confirmed that he received a 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) dated October 2, 2013. The tenant disputed the 1 Month Notice on October 10, 2013. The effective vacancy date indicated on the 1 Month Notice is listed as November 30, 2013. Based on the above, I find the tenant disputed the 1 Month Notice within the timeline defined under section 47 of the *Act*. Once the tenant disputed the notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid.

The tenant stated that the landlord waived their right to have rent paid on the first day of each month and that they could not issue an Eviction Notice if rent was paid by the 5<sup>th</sup> day of each month based on the rent collection notice reproduced as written above. I prefer the evidence of the landlord as **I find** that the tenant's interpretation of the rent collection notice is not reasonable. **I find** that the rent collection notice did not imply that the landlord waived their right to have rent paid on the first day of each month or any other rights under the *Act*. **I find** that the rent collection notice clearly states that rent is due on the first of every month.

Residential Police Guideline #38 – Repeated Late Payment of Rent states that three late payments are the minimum number sufficient to justify a notice under this provision. As a result of the tenant's testimony described above, **I find** that the tenant paid his rent late on three occasions as described above, even though the tenant was ordered by an Arbitrator to pay the rent which was also described above. Therefore, **I dismiss** the tenant's application and **I uphold** the landlord's 1 Month Notice dated October 2, 2013 with an effective vacancy date of November 30, 2013. Section 55 of the *Act* states:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) **the landlord makes an oral request for an order of possession, and**

(b) **the director dismisses the tenant's application or upholds the landlord's notice.**

**[emphasis added]**

As the landlord made a verbal request for an order of possession during the hearing and the tenant continues to occupy the rental unit, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective November 30, 2013 at 1:00 p.m.**, which is the effective vacancy date specified on the 1 Month Notice. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

As the tenant's application to cancel the 1 Month Notice was dismissed and the 1 Month Notice was upheld, **I find** it is not necessary to consider the second cause listed in the 1 Month Notice.

**Conclusion**

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause has been dismissed. The 1 Month Notice issued by the landlord has been upheld.

The landlord has been granted an order of possession effective November 30, 2013 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 20, 2013

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Residential Tenancy Branch

